

Douglas M. Foley (VSB No. 34364)  
Sarah B. Boehm (VSB No. 45201)  
McGUIREWOODS LLP  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel to the Debtors and  
Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - X  
In re: : Chapter 11  
:   
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :   
:   
Debtors. : Jointly Administered  
- - - - - X - - - - -  
  
CIRCUIT CITY STORES, INC., X Adv. Pro. No: 10-\_\_\_\_\_  
:   
Plaintiff, :   
:   
v. :   
:   
AVENUES IN LEATHER, INC., :   
:   
Defendant. :   
:   
- - - - - X

**COMPLAINT**

The debtors and debtors in possession in the above-  
captioned cases (collectively, the "Debtors"),<sup>1</sup> by and

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC

through their undersigned counsel, for their Complaint against the above-captioned defendant, Avenues in Leather, Inc. (the "Defendant"), and, in support thereof, allege as follows:

#### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

2. This action is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (E), (F), and (O).

3. Venue of these cases and this adversary proceeding in this district is proper under 28 U.S.C. §§ 1408 and 1409.

#### **BACKGROUND**

4. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

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(5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Proper ties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), PRAHS, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, Virginia 23060.

5. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

7. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores. As of March 8, 2009, the going out of business sales at the Debtors' remaining stores had been completed (the "Liquidation").

8. On September 24, 2009 the Court entered an Order Approving (I) Disclosure Statement (the "Disclosure Statement"), (II) Notice of the Disclosure Statement Hearing, (III) Hearing Date to Consider Confirmation of the Plan, (IV) Procedures for Filing Objections to Plan, (V)

Voting Agent and Deadlines Related to Solicitation and Confirmation, (VI) Procedures with Respect to Certain Claims and (VII) Solicitation Procedures for Confirmation of the Plan (Docket No. 5090).

#### **PARTIES**

9. Prior to the Liquidation, the Debtors were a leading specialty retailer of consumer electronics and operated large nationwide electronics stores that sold, among other things, televisions, home theatre systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics.

10. Defendant is a New Jersey corporation with its principal place of business in Trinton Falls, New Jersey.

#### **FACTS**

11. The Debtors and the Defendant were parties to a certain letter agreement for the purchase of certain goods produced by the Defendant for sale in the Debtors' stores (the "Written Contract"). The Written Contract is attached hereto as Exhibit A.

12. Pursuant to the Written Contract, the Debtors agreed to purchase and the Defendant agreed to sell certain

of its products to the Debtors in the United States. See Written Contract, at 1.

13. Pursuant to the Written Contract, the Defendant provided the Debtors a "defective allowance" in lieu of returns of defective products via a quarterly billback in the amount of .5% of net purchases. See Written Contract, at 2.

14. Pursuant to the Written Contract, the Defendant was required to remit to the Debtors the following, and the Debtors were entitled to payment from the Defendant for the following:

- a. Quarterly payments as a "defective allowance" in the amount of 0.5% of net purchases. See Written Contract, at 2.
- b. Debits for price protection. See Written Contract, at 2.
- c. Debits for the return of inventory overstock items. See Written Contract, at 2.

15. Pursuant to the Written Contract, the Defendant was required to remit payment to the Debtors for any debit balance within thirty (30) days of the Debtors' notice to the Defendant of such debit balance. See Written Contract, at 3.

16. On August 20, 2008, the Debtors sent a letter to the Defendant terminating the Written Contract (the

"Termination Letter"). A copy of the Termination Letter is attached hereto as Exhibit B.

17. Notwithstanding the Termination Letter, the Debtors and the Defendant continued their commercial relationship in substantially the same terms of the Written Contract (the "Contract") resulting in and contributing to the Unpaid Obligations.

18. Prepetition and postpetition through the Liquidation, the Debtors performed these services pursuant to the Written Contract and the Contract and demanded payment. To date, the Defendant is indebted to the Debtors for the following amounts:

<b>Avenues in Leather, Inc.</b>	
Pre-Petition Receivables	\$105,193.32
Post-Petition Receivables	<u>\$2,651.17</u>
<b><u>TOTAL</u></b>	<b><u><u>\$107,844.49</u></u></b>

(collectively, the "Unpaid Obligations").

19. On June 25, 2009, the Debtors sent a demand letter to the Defendant for the Unpaid Obligations (the "Demand Letter"). A copy of the Demand Letter is attached hereto as Exhibit C and is incorporated herein by reference.

20. Further, on or within ninety (90) days prior to the Petition Date (the "Preference Period"), the Debtors

made multiple transfers of interest of the Debtors' property to or for the benefit of the Defendant in an amount not less than \$520,233.40, as set forth hereto on Exhibit D (collectively, the "Transfers").

**COUNT I**

**(BREACH OF CONTRACT)**

21. The Debtors hereby incorporate by reference the allegations set forth in the foregoing paragraphs of this Complaint as if fully restated here.

22. Pursuant to the Contract, Defendant agreed to pay to the Debtors the Unpaid Obligations.

23. The Contract is a valid and enforceable contract.

24. Defendant's failure to compensate the Debtors for the Unpaid Obligations in the amount of \$107,844.49 constitutes a material breach of Defendant's obligations under the Contract.

25. As a direct and proximate result of Defendant's breaches, the Debtors have incurred damages in an amount not less than \$107,844.49, plus attorneys' fees, costs, expenses, and interest.

26. Accordingly, the Debtors are entitled to a judgment against Defendant in an amount not less than the Unpaid Obligations of \$107,844.49, plus costs, fees,

expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

**COUNT II**

**(TURNOVER OF PROPERTY PURSUANT TO 11 U.S.C. § 542)**

27. The Debtors hereby incorporate by reference the allegations set forth in the foregoing paragraphs of this Complaint as if fully restated here.

28. In the alternative to Count I, but without waiving any allegation contained therein, the Debtors make the following allegations in support of Count II.

29. Defendant is in possession, custody, and control of Unpaid Obligations in an amount not less than \$107,844.49, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

30. The Unpaid Obligations constitute valid and existing debts, due and owing by Defendant to the Debtors.

31. The Unpaid Obligations are property of the Debtors' estate under section 541 of the Bankruptcy Code and



constitute debts that are matured, payable on demand, or payable on order.

32. Accordingly, pursuant to section 542 of the Bankruptcy Code, Defendant should be compelled to immediately turn over and deliver to the Debtors the Unpaid Obligations in an amount not less than \$107,844.49, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

### COUNT III

#### (UNJUST ENRICHMENT/QUASI CONTRACT)

33. The Debtors hereby incorporate by reference the allegations set forth in the foregoing paragraphs of this Complaint as if fully restated here.

34. In the alternative to Counts I and II but without waiving any allegation contained therein, the Debtors make the following allegations in support of Count III.

35. The Debtors conferred a benefit upon Defendant pursuant to the Contract and described herein.

36. The Debtors reasonably expected to be compensated by Defendant in an amount not less than \$107,844.49 plus costs, expenses, and interest at the higher of the legal

rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

37. The Defendant's benefit without just compensation to the Debtors has unjustly enriched the Defendant in an amount not less than \$107,844.49 plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

38. The Debtors have no adequate remedy at law to recover the Unpaid Obligations.

39. Accordingly, as a result of Defendant's unjust enrichment at the Debtors' expense, the Debtors are entitled to restitution from the Defendant in an amount not less than \$107,844.49, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

#### **COUNT IV**

#### **(RECOVERY OF PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 547(b) and 550)**

40. The Debtors hereby incorporate by reference the allegations set forth in the foregoing paragraphs of this Complaint as if fully restated here.

41. The Transfers were made to or for the benefit of Defendant, a creditor of one or more of the Debtors.

42. The Transfers were made for or on account of an antecedent debt or debts owed by one or more of the Debtors before such Transfers were made.

43. The Transfers were made during the Preference Period.

44. The Transfers were made while the Debtors were insolvent.

45. The Transfers enabled the Defendant to receive greater value than the Defendant would have received if (i) Debtors' cases were cases under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payment on account of the debt paid by the Transfers to the extent provided by the provisions of the Bankruptcy Code.

46. Each of the Transfers constitutes an avoidable preference pursuant to 11 U.S.C. § 547(b).

47. Defendant is either the initial transferee of the Transfers, the entity for whose benefit the Transfers were made, or an immediate or mediate transferee of the Transfers.

48. Debtors are entitled to recover not less than \$520,233.40 pursuant to 11 U.S.C. § 550(a).

**PRAYER FOR RELIEF**

WHEREFORE, the Debtors respectfully pray that the Court:

- i. On Count I, enter judgment against Defendant for breach of contract and award the Debtors damages in an amount not less than \$107,844.49, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations; or, in the alternative,
- ii. On Count II, order Defendant to turn over and deliver to the Debtors the Unpaid Obligations in an amount in not less than \$107,844.49, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations; or, in the alternative,
- iii. On Count III, enter judgment against the Defendant for unjust enrichment and award the Debtors

restitution on account of the Defendant's unjust enrichment in an amount not less than \$107,844.49, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations;

- iv. On Count IV, enter an Order pursuant to 11 U.S.C. § 550 for avoidance of a preferential transfers pursuant to 11 U.S.C. § 547(b) in an amount not less than \$520,233.40, plus costs, fees, expenses, including attorneys' fees, and interest at the legal rate; and
- v. Grant the Debtors such other and further relief the Court deems just and appropriate.

Dated: Richmond, Virginia McGUIREWOODS LLP  
May 10, 2010

/s/ Douglas M. Foley  
Douglas M. Foley (VSB No. 34364)  
Sarah B. Boehm (VSB No. 45201)  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel for Debtors and Debtors  
in Possession

**Exhibit A**

**(FILED UNDER SEAL)**

**Exhibit B**



August 20, 2008

Legal  
Circuit City Stores, Inc.  
9950 Mayland Drive  
Richmond, VA 23233

VIA FEDERAL EXPRESS

Avenues in Leather, Inc.  
750 Hope Road  
Tinton Falls, NJ 07724  
Attn: Oti Shor, President

Re: Avenues in Leather, Inc. ("Avenues") w. Circuit City Stores, Inc. ("Circuit City")

Dear Mr. Shor:

Thank you for Avenues' letter dated August 12, 2008. We appreciate your concerns, but our vendor partners are sticking by us. Given the volume of business we conduct, Circuit City has decided to terminate its dealer/reseller arrangement with Avenues effective immediately. I understand that our respective business teams have been and will be in contact regarding any outstanding issues, and we look forward to an amicable separation.

Sincerely,

A handwritten signature in black ink, appearing to read "Victor Engesser".

Victor Engesser  
Vice President, Vendor Relations

cc: Bert Desmond, Vice President - US Sales  
Avenues in Leather, Inc.  
750 Hope Road  
Tinton Falls, NJ 07724



**Exhibit C**

## Circuit City Stores, Inc.

P.O. Box 5695

Glen Allen, Va 23058-5695

Wednesday, June 24, 2009

AVENUES

Re: Demand for Payment

Dear Sir or Madam:

As you no doubt know by now, on November 10, 2008 Circuit City Stores, Inc. and certain of its subsidiaries (collectively, "Circuit City") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond Division. As part of liquidation and wind down of Circuit City under its chapter 11 cases, we have completed a review of amounts unpaid by your company to Circuit City, as evidenced by the attached. Based on this information, the total amount due and outstanding from your company to Circuit City is listed below:

Total Due: \$107,921.78

By this letter, we hereby make demand for payment of the unpaid balance immediately. If we do not receive payment within the next two weeks it is our intent to refer the matter to our counsel to pursue payment in the Bankruptcy Court in Richmond, Virginia.

### Wire Instructions:

Account Name: ☐ Circuit City Stores, Inc.  
ABA/Routing #: ☐ 051400549  
Account #: ☐ 2055275431509  
Bank: ☐ Wachovia Bank  
☐ 10401 Deerwood Park Blvd, Building 1  
☐ Jacksonville, FL 32256

Sincerely,

Brandi Fose  
Circuit City Accounting Department

Brandi\_Fose@ccswinddown.com

cc: ☐ ☐ Daniel W. Ramsey, Esq.

LTRDMD01

**Merchandise Payable Summary**

<b>Vendor Number</b>	<b>Status</b>	<b>Name</b>	<b>Category</b>	<b>Amount</b>
0000071143	POST	AVENUES	Prepayments	(\$333.83)
			<b>Payables Total:</b>	(\$333.83)

Vendor No	Vendor Name	Receivable Type	Type	Tran Code	Key Rec No	Ref No	Description	Receivable	Status
0000070629	AVENUES		DF-	BB	39678		NOVEMBER BB VEN 070629	(\$0.09)	PRE
0000070629	AVENUES		DF-	ADJ	338687	08-08	AUGUST BB VEN 070629	\$665.99	PRE
0000070629	AVENUES		DF-	ADJ	338690	07-08	JULY BB VEN 070629	\$5,474.33	PRE
0000070629	AVENUES	Chargebacks VF	AA	AA	340113	98965	98965CV#70629	\$2,139.00	PRE
0000070629	AVENUES	Chargebacks VF	AA	AA	336540	98676	98676CV#70629	\$11,896.57	PRE
0000070629	AVENUES	Chargebacks VF	AA	AA	340162	99014	99014CV#70629	\$25,017.52	PRE
0000070629	AVENUES	Chargebacks VF	AA	AA	303790	83897	83897-4CV#70629	\$60,000.00	PRE
0000071143	AVENUES		DF-	BB	40048		JANUARY BB VEN 071143	\$133.92	POST
0000071143	AVENUES		DF-	BB	39737		NOVEMBER BB VEN 071143	\$1,207.00	POST
0000071143	AVENUES		DF-	BB	39910		DECEMBER BB VEN 071143	\$1,310.25	POST
Total Receivable:								\$107,844.49	

**Exhibit D**

**Avenues Preference Analysis - Payment detail**

**Exhibit D**

Vendor Name	Check Clear Date	Check Number	Paid Amount
AVENUES	8/12/2008	1033454	\$ 53,594.70
AVENUES	8/19/2008	1033798	\$ 34,856.11
AVENUES	9/8/2008	1034527	\$ 56,403.15
AVENUES	9/10/2008	1034670	\$ 36,632.00
AVENUES	9/11/2008	1034796	\$ 14,844.80
AVENUES	9/16/2008	1035085	\$ 85,814.40
AVENUES	9/25/2008	1035601	\$ 45,441.20
AVENUES	11/3/2008	1037043	\$ 192,647.04
<b>Total Check Amount</b>			<b>\$ 520,233.40</b>